

Guardianship/Conservatorship FAQ

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This Guide is formatted as frequently asked questions, followed by answers. Many of the answers include links to more information, as indicated by text that is blue. In this Guide you will find:

1. Greetings

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1. Greetings

It is likely that you are reading this material because you are concerned about the well-being of a family member, friend, or other vulnerable person and want to know more about guardianships or conservatorships. This Guide is intended give you basic information about the following:

- Guardianships and conservatorships in Nebraska,
- Duties and responsibilities of serving as a guardian or conservator including the reporting requirements
- Legal and court processes involved and
- Resources to assist you in protecting the interests of your loved one or protected person.

2. Important Definitions

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2. Important Definitions

Below is a list of brief definitions that will help you as you read this Guide:

B

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Best Interests: The least intrusive, least restrictive course of action available to meet the needs of the individual.

C

- Conservator: An individual, business or entity appointed by a court to manage the estate, property, and/or other business affairs of another individual.

E

- Estate: An individual's land, possessions, or money.

F

- Fiduciary: A person who handles the financial affairs of someone else. This person might be a conservator, trustee, or guardian. It is also a term used by the Veteran's Administration to designate someone who manages a veteran's financial benefits.
- Full Guardianship: A guardianship in which all of the incapacitated person's power to make decisions has been transferred to the guardian, except for those so personal that they cannot be transferred. (See question 7 for rights retained by a protected person).

G

- Guardian: An individual appointed by a court to make decisions on behalf of a person found to be incapable of managing his or her own affairs.
- Guardian Ad Litem: An attorney with special training, appointed by a court to represent the person's best interests during court proceedings.

I

- Incapacitated Person (Incapacity): An individual who is impaired because of mental illness, mental deficiency, physical illness or disability, chronic use of drugs or alcohol, or other causes. The impairment must be to the extent that the person does not have sufficient understanding or ability to make or communicate responsible decisions concerning himself or herself. The term "vulnerable adult" may also be used.
- Interested Party: Generally a person such as a spouse, child, parent, or someone who could be an heir to the estate of a ward or protected person. An interested person also includes any governmental agency (e.g., Veterans Affairs, Social Security, and State Health and Human Services) paying benefits on behalf of the ward, incapacitated person, protected person, or minor; and any person designated by

order of the court to be an interested person.

L

- Least Restrictive Alternative: A mechanism, course of action, or environment that allows an individual to live, learn, and work in a setting which places as few limits as possible on the individual's rights and personal freedoms as is appropriate to meet the needs of the ward.

M

- Mediation: A negotiation or discussion that is facilitated by a neutral third party trained as a mediator.

?P

- Protective Payee: A person assigned by the Nebraska Department of Health and Human Services to receive public assistance payments.
- Protected Person: A minor or vulnerable adult for whom a conservator has been appointed.

R

- Representative Payee: A person appointed by the Social Security Administration to receive and manage benefits administered through the Social Security Administration.

T

- Temporary Guardian: When an emergency exists, a person appointed by the court to temporarily act as guardian for a limited period of time when an individual is alleged to be incapacitated and has no guardian.
- Testamentary Guardian: A guardian who is assigned in a person's Last Will and Testament to serve as a guardian, typically for a minor child.

V

- Visitor: An impartial member of the community trained and appointed by the Court to gather information and make reports regarding the proposed ward's overall condition.
-

Vulnerable Adult: A person aged 18 or older whose ability to protect himself or herself from violence, abuse, neglect or exploitation is significantly impaired through physical or mental disability or illness, old age, emotional fragility or otherwise. The term "incapacitated person" may also be used.

W

- Ward: A person for whom a guardian is appointed.

Please see Neb. Rev. Stat. § 30-2601(1) for additional definitions and use of terms.

3. General Information

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3. General Information

Ch. 3 - Q1: Generally, what is guardianship and conservatorship law?

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A1: Most people at some point in their life will know a loved one who is unable to make responsible decisions about their finances, property, living situations or care. Guardianships and conservatorships are legal relationships designed to protect vulnerable persons by providing court-appointed representatives to act on their behalf. (Nebraska Conservatorship Flowchart, Nebraska Guardianship Flowchart, Nebraska Guardianship and Conservatorship Flowchart)

Ch. 3 - Q2: What is a guardian and what is a ward?

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A2: A guardian is a person or institution appointed by a judge to take care of and be legally accountable for a person who cannot take care of himself or herself.

The person that the guardian is responsible for is called the ward. Wards are either minor children or incapacitated persons.

- A minor child is someone who is under the age of majority, which is under the age of 19 in the state of Nebraska. Neb. Rev. Stat. § 43-2101.
- An incapacitated person is an adult who is impaired because of one or more of the following reasons:
 - Mental illness.
 - Mental deficiency.
 - Physical illness or disability.
 - Chronic use of drugs or chronic intoxication.
 - Other causes (except minority) to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning himself or herself.

Guardianships provide people the legal authority to make decisions for a person who is in need of continuous care. Guardians must act in the best interests of their ward while taking into account their ward's desires and preferences. Guardians must not, in any circumstances, act in a way that is self-serving or in a manner that is adverse to their ward's well-being.

It is important to remember that guardians are granted a great deal of power over their wards. For instance, an incapacitated adult may no longer be able to arrange for their own medical care, make financial decisions, or even decide if they would like to marry once a full guardianship is ordered. Because of the confining nature of guardianships, other less restrictive means should be explored before pursuing a guardianship. See also Surrogate Decision Making In Nebraska.

Ch. 3 - Q3: What is a conservator and whom do they protect?

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A3: A conservator manages the financial and business responsibilities of a protected person. The protected person could be a child or an adult for whom a conservator has been appointed or protective order has been made. Neb. Rev. Stat. § 30-2601(3).

Ch. 3 - Q4: What are the powers of a guardian?

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A4: Guardians have the power to care for their ward to the extent that the court allows them to do so. The Court will order the guardian to have the authority to meet the specific needs of the ward. Guardians are in a position of trust and must act in their best interests. A guardian with full authority has the power to:

1. Establish where the ward will live, within the state or elsewhere with court's permission;
2. Arrange for the ward's medical care;
3. Take care of the ward's personal effects (clothing, furniture, vehicles, personal items, etc.);
4. Give the necessary consent, approval, and releases on behalf of the ward;
5. Arrange for training, education, or other habilitating services for the ward;
6. Apply for private or governmental benefits that the ward is entitled to receive;
7. Take the necessary steps to ensure that anyone required to help support the ward does so;
8. Enter into contractual arrangements on behalf of the ward, if no conservator is appointed;
9. Receive money and tangible property on behalf of the ward and use these funds for the ward's room and board, medical care, personal effects, training, education, and services;
10. Utilize any other power the court may delegate.

Neb. Rev. Stat. § 30-2620(a), § 30-2628(1)-(3).

Ch. 3 - ?Q5: How are guardianships or conservatorships created?

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Ch. 3 - ?Q5: How are guardianships or conservatorships created?

A5: To set up a guardianship or conservatorship, a Petition for Guardianship or Conservatorship (or both) is filed in the county where the alleged vulnerable adult or minor lives. The petition includes the reason(s) the guardianship is necessary, names and addresses of interested persons and the name or names of individuals willing to serve as guardian(s) and/or conservator(s). The Court will schedule a hearing and

notice will be served to interested persons.

At the hearing, the Court will consider the evidence presented to determine if the proposed ward is truly incapacitated. If the Court finds the proposed ward is incapacitated, an order for the least restrictive alternative available will be issued.

The court may order a "limited guardianship" in which only some decisions (such as medical and living arrangements) are to be decided by the guardian while other decisions (purchasing daily necessities for example) are made by the ward. While the law states that guardianships will be "limited" unless the court deems a full guardianship is necessary, the majority of guardianships are "full." Neb. Rev. Stat. § 30-2620.

Often, but not always, guardians and conservators are a family member of the vulnerable adult. Neb. Rev. Stat. § 30-2627.

Ch. 3 - ?Q6: What are the different kinds of guardianships and conservatorships?

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Ch. 3 - ?Q6: What are the different kinds of guardianships and conservatorships?

A6: In addition to identifying any limitations, the court will specify what type of guardianship or conservatorship is needed. The following account for the different types of relationships:

- **Guardian with control of the ward's assets.** This guardian has control of the ward's property, money, assets, possessions or income (including social security or other benefits). The guardian's responsibilities will include an annual report.
- **Guardian with a Court-Approved Budget.** If the guardian has control of the ward's assets, the court can approve an annual budget, which simplifies the annual reporting process.
- **Conservator.** A conservator who has been appointed to oversee the vulnerable adult's financial and property decisions will file a report with the court annually regarding the financial activity the conservator has taken on behalf of the protected person or minor.
- **Both guardian and conservator.** A person who has been appointed both guardian and conservator as described above.
- **Guardian without control of the ward's assets.** A guardian whose Letters of Appointment state that the guardian has no authority over the ward's assets should file an annual report on the ward's condition.

Neb. Rev. Stat. § 30-2647

Additional information regarding the requirements of different types of guardianships or conservatorships can be found in Question 21.

Ch. 3 - Q7: What rights does the ward retain when

a guardian is appointed?

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A7: A ward retains all the rights that a citizen of the United States would have, except those that the court grants to the guardian. The rights that the ward retains include:

Right to privacy, both regarding the body and with communications with others via mail, phone, or personal visits;

- Right to appropriate services based on their needs;
- Right to have the guardian take into account their desires and preferences;
- Right to a safe, sanitary living environment;
- Right to the least restrictive living arrangements as possible;
- Right to not be discriminated against based on race, religion, creed, sex, age, marital status, sexual orientation or political affiliations;
- Right to have explanations of any medical procedures or treatment;
- Right to have personal information kept confidential;
- Right to speak privately with an attorney, ombudsman or advocate; and
- Right to petition the court to terminate a guardianship or to bring a grievance against a guardian.

However, a ward's right to marry, divorce, and to procreate may be controlled by the court, depending on the scope of the guardianship and the nature of the circumstances. A guardian has similar powers, rights and duties respecting their ward as a parent has respecting their children. Neb. Rev. Stat. § 30-2628. See generally, Surrogate Decision Making In Nebraska.

4. Duties and Responsibilities of Guardians and Conservators

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4. Duties and Responsibilities of Guardians and Conservators

Ch. 4 - Q8: What are a guardian's responsibilities to their ward?

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Ch. 4 - Q8: What are a guardian's responsibilities to their ward?

A8: A guardian must protect the personal and financial interests of their ward. Guardians must obtain legal and financial documents important to their ward (estate information, health insurance, medical records, etc.). Guardians are expected to keep information regarding their ward confidential unless disclosure is necessary to protect the ward.

Guardians are expected to maintain relationships with the ward's professional service providers, including doctors, attorneys, and financial consultants. Guardians should have regular contact with such individuals to plan for the best interests of the ward.

Guardians should respect their wards and attempt to include them in making important decisions. Guardians should understand the personal desires of their ward and should not take unnecessary control over their ward's life. Wards will maintain control over many decisions (including choices about friends, social functions, diet and exercise, etc.).

Guardians should reevaluate their ward's condition periodically. If the ward's condition improves, the guardian must return to court for a legal reduction of their control over the ward.

Ch. 4 - Q9: What are a guardian's responsibilities to the court?

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Ch. 4 - Q9: What are a guardian's responsibilities to the court?

A9: As a legal relationship, guardians must follow the court rules that apply to guardianships. Nominated guardians must disclose certain information to the Court before they can be appointed (See Q16). After being appointed, guardians must abide by the court order that lists their specific duties. Furthermore, the guardian must complete and file certain forms as specified in the court order (see Q17). Once all the completed forms are filed with the Court, guardians will receive ?Letters of Guardianship,? which they will use to secure appropriate financial access, gain guardianship training certification, and file for control of their ward?s real property (see Q18). (Nebraska Conservatorship Flowchart, Nebraska Guardianship Flowchart, Nebraska Guardianship and Conservatorship Flowchart)

Guardians also have regular reporting and annual accounting requirements as addressed in A6. Requirements.

Ch. 4 - Q10: Can a person be both a guardian and a conservator?

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Ch. 4 - Q10: Can a person be both a guardian and a conservator?

A10: Yes. A person can be both guardian and conservator for a ward. If the ward has significant assets, the court may appoint a separate conservator to manage the ward?s finances.

Ch. 4 - ?Q11: Are there other important rules that I should know as a guardian or conservator?

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Ch. 4 - ?Q11: Are there other important rules that I should know as a guardian or conservator?

A11: Yes. There are number of rules to follow once you become guardian or conservator:

- **NEVER** co-mingle your ward?s finances with your personal finances. You may need to open new accounts immediately in your ward?s name, if necessary.
- You cannot reimburse yourself more than \$500 or pay an attorney more than \$1,000 each year without the Court?s approval.
- You cannot make any ATM withdrawals or receive cash back on a transaction from any account without a Court order. If an account is restricted then you cannot access that money without a court

order.

- You must notify the Court immediately if you or your ward has a change in address.
- You must notify the Court **within 10 days** if the ward dies.
- You cannot move the ward out of state without the Court's permission.
- If you find or receive additional assets for your ward, you must report them to the Court **within 30 days** using the Notice of Newly Discovered Assets as described under Question 23.
- You need to get court approval and a court order in order to resign as guardian or conservator.

Quick Reference for Guardians/Conservators, Form No. CC 16:2.7.1.

Ch. 4 - Q12: When do the duties of a guardian or conservator end?

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Ch. 4 - Q12: When do the duties of a guardian or conservator end?

A12: The duties of a guardian or conservator end when one the following takes place:

- For a minor ward, when the ward reaches the age of majority, has been adopted, has been married, or has joined the military.
- For an adult ward, when the ward dies or the ward's incapacity no longer exists.
- When the guardian or conservator is officially terminated by the court.

Neb. Rev. Stat. § 30-2614.

Ch. 4 - Q13: What happens if the guardian or conservator dies, becomes incapacitated, or is removed or resigns?

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Ch. 4 - Q13: What happens if the guardian or conservator dies, becomes incapacitated, or is removed or resigns?

A13: If a guardian or conservator dies or is incapacitated, the guardianship or conservatorship over the ward does not end. A successor guardian or conservator will need to be appointed. Resignation by a

guardian does not terminate the guardianship until approved by the court. Often, the court will require a replacement guardian or conservator before approving a resignation. Neb. Rev. Stat. § 30-2614.

A standby guardian can be appointed to ensure continuity of care if a guardian or conservator dies or becomes incapacitated. (Nebraska Conservatorship Flowchart, Nebraska Guardianship Flowchart, Nebraska Guardianship and Conservatorship Flowchart)

5. Process of Becoming a Guardian or Conservator

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?(Nebraska Conservatorship Flowchart, Nebraska Guardianship Flowchart, Nebraska Guardianship and Conservatorship Flowchart)

Ch. 5 - Q14: Who can be a guardian or conservator?

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Ch. 5 - Q14: Who can be a guardian or conservator?

A14: With few exceptions, any competent person or suitable institution may be appointed guardian of an incapacitated person. Neb. Rev. Stat. § 30-2627. The court seeks to appoint a guardian who will serve the best interest of the ward. Direct relatives are favored for the role of guardian, but the Court is allowed discretion in its appointment. The Courts are also directed to hear the express wishes of the ward. In some cases, the Court might require guardians to furnish a bond in accordance with Neb. Rev. Stat. § 30-2640 and § 30-2641.

Similarly, the Court may appoint an individual or corporate trustee as conservator of a ward's estate. Neb. Rev. Stat. § 30-2639. The court prioritizes conservator appointments in much the same way as guardian appointments.

Ch. 6 - Q15: How does a person file a petition for guardianship or conservatorship

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Ch. 6 - Q15: How does a person file a petition for guardianship or conservatorship

A15: At this time, templates or sample forms are not available for a petition for a finding of incapacity and appointment of a guardian or conservator. Neb. Rev. Stat. § 30-2619. To file the petition, it is strongly recommended that you consult with a lawyer who practices in the area of guardianship law. (see Additional Resources for Court and Agency References)

The court may appoint a visitor to interview the alleged incapacitated person to verify the allegations of incapacity. Neb. Rev. Stat. § 30-2619.01. **Within 60 days** of the guardianship petition, the visitor will file an evaluation with the Court, which is made available to the guardian ad litem, the proposed ward, and the petitioner. The evaluation will include the visitor's recommendations regarding the proposed guardianship. Neb. Rev. Stat. § 30-2619.03. Following this report, parties have **10 judicial days** to file a response. Neb. Rev. Stat. § 30-2619.04.

After the petition is filed, the Court will issue an order setting the matter for hearing. Petitioners will need to serve personal notice on the incapacitated person and his or her spouse **at least 14 days prior** to the hearing. Notice must also be served on the incapacitated person's parents, adult children, and anyone who is currently serving as guardian or conservator or who has custody of the incapacitated person. If the person to be protected has no spouse, children, or parents, at least one of their closest adult relatives must be given notice. Petitioners need to check the statutes to ensure all parties are properly notified, or consult with a lawyer to ensure proper notice. Neb. Rev. Stat. § 30-2625, § 30-2634.

At the hearing, the Court will determine whether the person needs a guardian or conservator by clear and convincing evidence. If a party objects to someone being appointed, then the matter is considered "contested" and will be set for trial at a later date so the Court has time to hear each party. If the Court decides the person needs a guardian or conservator, then an Order of Appointment will be issued.

Ch. 5 - Q16: What must I do if I am nominated to serve as guardian or conservator?

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Ch. 5 - Q16: What must I do if I am nominated to serve as guardian or conservator?

A16: The person nominated in the petition to serve as guardian or conservator are required by law to complete and submit the following reports to the court. Neb. Rev. Stat. § 30-2602.02. Information on how to obtain the reports is found on the Nebraska Supreme Court website.

1. A complete and detailed credit report from any established credit reporting agency/business is accepted. (A credit score without supporting information is not sufficient.)
2. A Sex Offender Registry check: Nebraska residents use the Nebraska Sex Offender Registry and

complete an Affidavit of Sex Offender Registry Search;

3. A Criminal History check: Nebraska residents use the Nebraska State Patrol Criminal History Reports for Arrest and Prosecution sheet; and
4. A Child/Adult Abuse and Neglect Registry check provided by the Department of Health and Human Services.

These reports must be completed and submitted to the court **at least 10 days prior** to the appointment hearing date. A person can ask the court to waive one or more of these reports for good cause.

NOTE: If a petitioner requests an immediate hearing because of an emergency need of a temporary guardianship or conservatorship, the background checks are not required.

Ch. 5 - Q17: What must I do when I am appointed guardian or conservator?

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Ch. 5 - Q17: What must I do when I am appointed guardian or conservator?

A17: As a newly appointed guardian or conservator, there are specific forms that must be filed. When you receive your Order of Appointment from the court, you need to file the following **within 30 days** from the Order:

- Acceptance of Appointment (Forms No. CC 16:2.2.1 - CC 16:2.2.9);
- General Information Sheet;
- Address Information Sheet;
- Personal and Financial Information;
- Inventory and Affidavit of Due Diligence ? sent to all interested parties and to ward with a Waiver of Notice Form;
- Financial Institution Receipt of Orders;
- Proof of Restricted Account (if applicable); and
- Proof of a bond (if required).

If the guardianship or conservatorship has funds in an account which requires a court order to access, the guardian must file a Proof of Restricted Account from a Depository or Financial Institution **within 10 days** of appointment. If you are working with a lawyer, he or she will assist you with these steps and filing of the forms.

After all of these requirements are met, you will be issued ?Letters of Guardianship or Conservatorship? which give you authority to serve.

Ch. 5 - Q18: What must I do after I receive my Letters of guardianship or conservatorship?

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Ch. 5 - Q18: What must I do after I receive my Letters of guardianship or conservatorship?

A18: Once you receive your Letters of Guardianship and/or Conservatorship, it is your responsibility to provide your Letters to all institutions and agencies maintaining your ward's assets. You must file the following forms with the Court **within 30 days** after they have been completed by the appropriate party:

1. Financial Institution Receipt of Letters. This shows you provided your Letters to each financial institutions (banks, credit unions, etc.) where the ward has assets. This form must be attached to a printout from each financial institution that details the type and amount of each account held by the ward.
2. Certificate of County Court Proceeding Involving Real Estate. This will ensure any communication regarding the wards real estate to your attention.

(Nebraska Conservatorship Flowchart, Nebraska Guardianship Flowchart, Nebraska Guardianship and Conservatorship Flowchart)

Ch. 5 - Q19: What training is required to be a guardian or conservator?

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Ch. 5 - Q19: What training is required to be a guardian or conservator?

A19: New guardians and conservators must complete a training program approved by the State Court Administrator. Neb. Rev. Stat. § 30-2627(d). Training provides detailed information to assist guardians or conservators understand their responsibilities and resources available to help them meet the needs of their wards.

A list of upcoming approved training offered by the Office of Public Guardian can be found here. Training must be completed and a Certificate filed with the court **within 90 days** of appointment.

6. Reporting Requirements

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A. General Reporting Information

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Ch. 6 - Q20: As guardian or conservator, do I have annual reporting responsibilities?

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Ch. 6 - Q20: As guardian or conservator, do I have annual reporting responsibilities?

A20: Every year **no later than 30 days** after the anniversary of receiving Letters of guardianship or conservatorship, a guardian must complete and submit a report and accounting on forms ordered and by the appointing court. The court will provide the guardian with the forms at the time of appointment and will send reminder 45 days before the report's due date. It is important for the guardian to keep a current mailing address with the county court in which the guardianship is filed.

Ch. 6 - Q21: What are the guardianship and conservatorship packets?

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Ch. 6 - Q21: What are the guardianship and conservatorship packets?

A21: Required annual reporting forms are bundled into packets specific to the type of guardianship or conservatorship, and whether the protected person is for an adult or a minor:

1. Guardian with control of the ward's assets ? use Packet A for adult wards; Packet MA for minors.
2. Guardian with a Court-Approved Budget ? use Packet B for adult wards; Packet MB for minors.
3. Conservator ? use Packet C for both adults and minors.
4. Both guardian and conservator ? use Packet D for adult wards; Packet MD for minors.
5. Guardian without control of the ward's assets ? use Packet E for adult wards; Packet ME for minors.

The packets are intended to simplify the reporting process for guardians and conservators, and to provide the Court with the required information.

Ch. 6 - Q22: How do I know what type of guardian or conservator I am?

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Ch. 6 - Q22: How do I know what type of guardian or conservator I am?

A22: Your responsibilities as guardian and/or conservator are specified on your Letters of Appointment. Additional information regarding your financial responsibilities may be outlined on subsequent orders from the Court. You can file a Petition for Instructions and/or Direction to obtain further clarification of your responsibilities.

Ch. 6 - Q23: What should I do if my ward receives assets during the year, or I discover new assets?

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Ch. 6 - Q23: What should I do if my ward receives assets during the year, or I discover new assets?

A23: If additional assets worth more than \$500 are received during the year, you must file a Notice of Newly Discovered Assets form within 30 days.

Ch. 6 - Q24: What happens if I forget to file a report?

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Ch. 6 - Q24: What happens if I forget to file a report?

A24: If you fail to file any of the required reports on time, you will receive an Order to Show Cause. This order will be require you to appear in court to explain why the report was not filed.

Ch. 6 - Q25: What should I do if my annual reports will be late?

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Ch. 6 - Q25: What should I do if my annual reports will be late?

A25: If you know that you will not get your annual reports in on time, let the Court know in writing. Include the following information:

- The name of your ward;
- The case number;
- Why you cannot get the reports in on time;
- When you will have the reports filed; and
- You name, address and phone number.

Ch. 6 - Q26: This seems a little overwhelming; do I really need to file all of these forms every year?

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Ch. 6 - Q26: This seems a little overwhelming; do I really need to file all of these forms every year?

A26: Yes. However, the annual reporting forms can be completed online and information saved to simplify the process next year.

Some of the annual reporting requirements may be waived for good cause shown if the guardian petitions the Court. The procedure for requesting a waiver is found in UCCR § 6-1445.01.

B. Full Annual Accounting Reports

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B. Full Annual Accounting Reports

Ch. 6 - Q27: If I am appointed solely as a guardian (with no mention of being appointed a conservator)...

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Ch. 6 - Q27: If I am appointed solely as a guardian (with no mention of being appointed a conservator)...

Q27: If I am appointed solely as a guardian (with no mention of being appointed a conservator), with possession or control over some or all of my ward's financial transactions, property, or assets, do I still need to file an Updated Annual Inventory and Accounting every year?

A27: Yes. Guardians are required to complete an Updated Inventory and Accounting every year. If you

have control over *all* of your ward's financial transactions, property, or assets, you must file a complete Updated Inventory and Accounting each year. If you only have control over *some* of your ward's financial transactions, property, or assets, then you need to file an Updated Inventory and Accounting of the ward's financial transactions, property, or assets over which you do have control.

Remember to refer to your Order of Appointment to see what the Court has specified as your responsibilities to your ward and for reporting.

Ch. 6 - Q28: What if I am a guardian who does not have any possession or control over my ward's financial transactions, property, or assets; do I still need to file both an Updated Annual Inventory and Account every year?

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Ch. 6 - Q28: What if I am a guardian who does not have any possession or control over my ward's financial transactions, property, or assets; do I still need to file both an Updated Annual Inventory and Account every year?

A28: Guardians who do not have control of the ward's estate are not required to file with the Court an updated inventory, annual accounting, bank statements, brokerage statements, Office of Public Guardian individual ledgers, or any certificates of possession, but must file a certificate of mailing showing that copies of the guardian's annual report and a notice of right to object form were sent to all interested persons by first-class mail postage prepaid every year unless waived by the court for good cause shown. For purposes of this paragraph, interested persons shall include all those defined in § 6-1433(B)(2).

Refer to your Order of Appointment to see what the court has specified as your responsibilities to your ward and for reporting.

C. Court-Approved Budget Reports

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C. Court-Approved Budget Reports

Ch. 6 - Q29: If I have been ordered to file a Court-Approved Budget, what forms must I file?

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Ch. 6 - Q29: If I have been ordered to file a Court-Approved Budget, what forms must I file?

A29: A guardian or conservator may request the court allow them to file a Court-Approved Budget each year that summarizes the expenses expected for the coming year. Individuals under such court approval must use Packet B. The budget can allow for payments such as rent, room, board, and fees at the end of the annual reporting period, and the Court can authorize a variance of up to 10 percent over the original budgeted amounts approved in the order. The guardian must file a report summarizing the payments made, including any beyond the estimate, a copy of the last bank statement, and an inventory at the end of the year, as well as request a budget for the next year. The budget might not require the same level of detail that the Annual Accounting has and may help streamline the process, especially for wards who do not have significant assets.

Ch. 6 - Q30: If I use the Court-Approved Budget process, do I still have to complete the Annual Accounting?

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Ch. 6 - Q30: If I use the Court-Approved Budget process, do I still have to complete the Annual Accounting?

A30: No, the budget reports take the place of Annual Accounting, unless otherwise ordered by the Court.

Ch. 6 -Q31: When is the budget approved?

Ch. 6 -Q31: When is the budget approved?

A31: The Court can authorize a budget at a hearing after providing notice to all interested parties. If there has been a waiver of notice of hearing signed by all interested parties, the Court may enter the order without a hearing.

7. Resolving Disputes About Guardianships and Conservatorships

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Ch. 7 - Q32: How do I change a guardian?

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A32: Any person interested in the welfare of the protected person may petition for removal of a guardian if it would be in the best interest of the protected person. This means that almost anyone who is interested in the life of the ward can seek to have a guardian removed or a new guardian appointed; even the ward can petition.

Ch. 7 - Q33: If a person identified as an "interested party" doesn't respond to the initial Notice of Interested Party Form that I send out, am I, as guardian, required to send a new Notice of Interested Party Form to them every year?

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A33: Interested persons are defined by law and entitled to notice regarding the guardianship/conservatorship and welfare of the protected person. However, an interested person can waive their right to receive the annual reports by filing a Waiver of Notice with the Court. This does not affect their standing as an interested person or their receipt of notice of other activity in the case.

If as guardian you are concerned that it would not be in the best interest of the protected person for someone who is an interested person under the law to receive annual reports or other information about the ward, you can tell the judge about those concerns when you are appointed, or you can submit a written explanation and request for direction to the judge. § 6-1433

Ch. 7 - Q34: My family or friends cannot agree about whether my loved one needs a guardian or conservator or who should be appointed. What should I do?

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Ch. 7 - Q34: My family or friends cannot agree about whether my loved one needs a guardian or conservator or who should be appointed. What should I do?

A34: A judge will only appoint a guardian if it is the least restrictive way to meet the needs of the person to be protected. It is best to work with your loved one's support group to identify other options before you explore a guardianship for them.

You can also try to negotiate with the interested parties who would be the best choice to nominate be the guardian(s) or conservator(s)

If you need help in reaching an agreement, Mediation may be helpful. Mediation is a confidential process

for resolving disagreements that is facilitated by a trained, neutral third-party mediator. The process gives all parties a chance to be heard in a safe, comfortable environment where the family and others may decide a fair solution. Mediation sessions can be voluntarily scheduled at convenient a time and can be held remotely. (see Q35)

If there is a disagreement as to the capacity of an individual to care for themselves, or the suitability of the individual nominated to serve as guardian or conservator, the hearing before a judge allow the various parties to present information and arguments to the judge, so the judge will be able to make a decision. Intimate details concerning the lives of the ward and of the interested parties will likely surface in a public forum. These "contested" guardianship or conservatorship proceedings can negatively impact relationships and be emotionally taxing for everyone involved.

If a guardianship or conservatorship case is contested, the Court has the power to order all parties to mediation. In that circumstance, all parties must participate. Neb. Rev. Stat. § 25-2911(1)(d).

Ch. 7 - Q35: Why would mediation be a good idea?

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Ch. 7 - Q35: Why would mediation be a good idea?

A35: There are a number of benefits to mediation when there is disagreement among friends and family members, including:

- Personalized solutions to difficult problems. You and the other participants have direct input in the solutions agreed upon, instead of relying solely on a judge's opinion.
- Not only can resolve legal issues, but also helps with personal or familial problems.
- Preserves relationships by using a collaborative process instead of an adversarial process.
- Reduces the likelihood of future, reoccurring disputes by helping the other participants find ways avoid or manage future disagreements.
- Can save time and money.

Ch. 7 - Q36: What happens in a mediation session?

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Ch. 7 - Q36: What happens in a mediation session?

A36: There may be one or two mediators who will facilitate discussion by asking questions to help those involved identify the key conflicts and to make sure issues are clear to the participants. Everyone will have an opportunity to be heard and to share their viewpoint in a structured environment. The mediators will help

participants engage in creative and collaborative dialogue to determine possible solutions by exploring ways to come to an agreement to resolve the issues. <http://themediationcenter.org/pg5.cfm>.

8. Information for Families

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Ch. 8 - Q37: Are there other ways to assist a vulnerable adult as an alternative to or in addition to guardianship or conservatorship?

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Ch. 8 - Q37: Are there other ways to assist a vulnerable adult as an alternative to or in addition to guardianship or conservatorship?

A37: Yes. There are several different ways you may be able to help your protected person without seeking a guardianship or in addition to a guardianship. These options include:

- Representative Payee: if your protected person is eligible for Social Security or Supplemental Security Income, a person can be appointed by the Social Security Administration to receive and manage those benefits if the protected person is unable to manage the funds independently.
- Advance Directives: if a person is still competent, they can inform others of what choices they would like to be made if they later become incapacitated.
 - A Living Will is a written statement describing the type of care a person wishes to receive if they have a terminal illness or are in a persistent vegetative state. A Living Will can be revoked at any time regardless of mental or physical condition.
 - A Medical Directive is a list of medical procedures that a person may indicate they do or do not want and is often a part of a living will or health care power of attorney.
- Power of Attorneys: these documents allow one person or people to act on another's behalf. The person creating the document (the principal) grants power to act to the agent (or attorney-in-fact). Pre-planning is vital when considering a Power of Attorney. The decision and document **must** be executed before the principal is in need of assistance in decision making. A Power of Attorney is not a viable alternative to guardianship once a person has become incapacitated. A Power of Attorney can be revoked or modified at any time so long as the principal is competent.
 - A Health Care Power of Attorney is a durable power of attorney that authorizes an agent to

make health care decisions on the principal's behalf. It can be revoked at any time as long as the principal is competent.

- Non-Durable Power of Attorney automatically terminates if the principal dies or becomes incapacitated. Durable Power of Attorney lasts beyond incapacity. In Nebraska, Power of Attorney is durable by default, unless it expressly provides that it will be terminated by incapacity.

Please see our list of Agency References for more information.

Ch. 8 - Q38: How do I know if a family member or friend needs a guardian or conservator?

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Ch. 8 - Q38: How do I know if a family member or friend needs a guardian or conservator?

A38: The decision to seek guardianship or conservatorship is a complicated and hard decision to make for most people. If you have concerns about a loved one's ability to communicate and to make decisions, it will be helpful for you to learn about guardianship and its alternatives. Community resources such as senior centers, aging offices, developmental disabilities resources, physicians, geriatric assessment professionals, and lawyers can all be of assistance. Please see our list of Agency References for more information.

Some additional considerations when deciding if guardianship is right for your family member or friend include your loved one's individual strengths, challenges, and best interests for that person. Additionally, you should think about how seeking a guardianship or conservatorship for your loved one might alter your relationship with that person and with the rest of the family. Some people convene a family meeting with or without the assistance of a trusted friend or mediator to talk about the loved one's situation and what next steps might be helpful.

Ch. 8 - Q39: Will I need to seek guardianship for my child who has a developmental disability?

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Ch. 8 - Q39: Will I need to seek guardianship for my child who has a developmental disability?

A39: Parents often think that because they are the parents, they will always have the right to make and communicate decisions for their child who has a developmental disability. However, in Nebraska, after your child's 19th birthday, he or she is an adult and is presumed to be legally competent, even if they have a disability that significantly impairs their ability to make or communicate decisions. At age 19, the law considers the parent to no longer be the child's legal guardian, and your young adult is legally responsible for making decisions about medical care, finances, and all other areas of life. For example, many parents are caught off guard when they take their young adult to the doctor and are informed they no longer have a legal right to health information and decision-making. Parents who are considering guardianship or any of its alternatives need to be pro-active and have plans in place for when their child turns 19. Neb. Rev. Stat. § 43-2101.

9. Additional Resources

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For input or questions regarding Guardianships and Conservatorships, send an email to: nsc.guardianconservator@nebraska.gov

Contact Information

- County Court Clerk Magistrate: <https://supremecourt.nebraska.gov/directories/county-court-contacts>
- Office of the State Court Administrator: <https://supremecourt.nebraska.gov/administration> Phone: 402-471-3730
- Mediation Centers: <https://supremecourt.nebraska.gov/programs-services/mediation/odr-approved-meditation-centers>
- Emergencies: Call 911 or your local law enforcement agency

Agency References

- Health and Human Services, State Unit on Aging: <http://dhhs.ne.gov/medicaid/Aging/Pages/ElderRights.aspx>
- Health and Human Services, Adult Protective Services: <https://dhhs.ne.gov/Pages/Adult-Protective-Services.aspx> Phone: 1-800-652-1999
- Nebraska Foster and Adoptive Parent Association (information and support for foster parents who are considering becoming guardians of their foster children): <http://www.nfapa.org/>
- AARP: <http://www.aarp.org/>
- The Arc of Nebraska: <http://arc-nebraska.org/>
- Aging Partners: <https://www.lincoln.ne.gov/City/Departments/Aging-Partners>
- Nebraska State Bar Association: <https://www.nebar.com/>

Relevant Guardianship or Conservator Documents

- Packet A - Guardian with control of the ward's assets
<https://supremecourt.nebraska.gov/sites/default/files/CC-16-2-33.pdf>

- Packet MA ? Guardianship for a Minor Annual Report
<https://supremecourt.nebraska.gov/sites/default/files/CC-16-2-33M.pdf>
- Packet B - Guardian with a court-approved budget:
<https://supremecourt.nebraska.gov/sites/default/files/CC-16-2-34.pdf>
- Packet MB ? Guardianship for a Minor with Budget Annual Report
<https://supremecourt.nebraska.gov/sites/default/files/CC-16-2-34M.pdf>
- Packet C - Conservator: <https://supremecourt.nebraska.gov/sites/default/files/CC-16-2-35.pdf>
- Packet D - Both guardian and conservator: <https://supremecourt.nebraska.gov/sites/default/files/CC-16-2-36.pdf>
- Packet MD ? Guardianship and Conservatorship for a Minor Annual Report
<https://supremecourt.nebraska.gov/sites/default/files/CC-16-2-36M.pdf>
- Packet E - Guardian without control of the ward's assets:
<https://supremecourt.nebraska.gov/sites/default/files/CC-16-2-37.pdf>
- Packet ME ? Guardianship for a Minor with No Control Over the Estate of the Minor Ward Annual Report: <https://supremecourt.nebraska.gov/sites/default/files/CC-16-2-37M.pdf>

Other Forms: <http://supremecourt.ne.gov/forms>

10. Flowchart of Procedures for Nebraska Guardianships

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10. Flowchart of Procedures for Nebraska Guardianships

- CC 16:2.85 Guardianship Flowchart
 - CC 16:2.86 Conservatorship Flowchart
 - CC 16:2.87 Guardianship and Conservatorship Flowchart
 - CC 16:2.222 Flowchart, Public Guardian/ Emergency Appointment Process
 - CC 16:2.221 Flowchart, Public Guardian, Nomination Process
 - CC 16:2.410 Flowchart, Public Guardian, Waiting List Process
 - CC 16:2.84 Flowchart, Standby Guardian
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